No. 10961

United States
Circuit Court of Appeals
For the Ninth Circuit

THOMAS W. NEALON,

Appellant,

vs.

HARRY W. HILL, as Receiver of Intermountain Building & Loan Association, a corporation,

Appellee.

Upon Appeal From the District Court of the United States for the District of Arizona

Petition for Rehearing and Application for Stay of Mandate

LESLIE C. HARDY,
Attorney for Appellant

THOMAS W. NEALON,
In Propria Persona

McGREW'S COMMERCIAL PRINTERY

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Appellee.

Petition for Rehearing

COMES NOW Thomas W. Nealon, appellant herein, and respectfully petitions this Honorable Court to reconsider its opinion filed herein on June 29, 1945, dismissing appellant's appeal, and to grant a rehearing of the decision and judgment dismissing the appeal, and in support thereof appellant respectfully represents:

I

Appellant respectfully asserts that the opinion of the court in this cause is erronous in that the court has incorrectly applied the rule of decision applicable to this cause as announced by the Supreme Court of the United States in the cases of *Wayne*

Gas Co. v. *Owens-Illinois Glass Co.,* 300 U. S. 131, *Bowman* v. *Loperena,* 311 U. S. 262, and *Pfister* v. *Northern Illinois Finance Corporation,* 317 U. S. 144.

Those decisions do not confine their application to bankruptcy proceedings, but, on the contrary, they apply a rule of equity to bankruptcy proceedings. Those decisions, in their application to bankruptcy proceedings, specifically decide that bankruptcy courts apply the doctrine of equity and that courts of bankruptcy are courts of equity without terms.

Local Loan Company v. *Hunt,* 292 U. S. 234

II

Appellant's petition filed March 31, 1944 to review and rehear the order entered December 7, 1942, was not too late because it was filed, as the opinion of this court recites, "after the expiration of the term at which the order was entered." Terms of court by Rule 6 (c) of the Rules of Civil Procedure are not controling.

Sprague v. *Ticonic National Bank,* 307 U. S. 169, note 9

III

The court, by its opinion, denominates this proceeding as "a civil action". Accordingly, Rule 60 (b) of the Rules of Civil Procedure, 28 USCA, following Section 723 (c), authorizes the entertainment of appellant's petition filed March 31, 1944. The exception (1) of that rule was directly invoked by appellant in this proceeding. Appellant asserts that the rule was devised to correct the error appearing on the record herein, especially in a receivership proceeding in equity not closed.

IV

For the reasons hereinabove set forth, appellant respectfully urges that the decision and judgment of this court, made and entered June 29, 1945, be reconsidered, and that a hearing thereof be granted.

Respectfully submitted,

LESLIE C. HARDY,
Attorney for Appellant

THOMAS W. NEALON,
In Propria Persona

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Application for Stay of Mandate

In the event the foregoing petition for rehearing is denied, appellant prays for a stay of the mandate herein and in support thereof respectfully represents to this Honorable Court, as follows:

Appellant, believing that the decision of his Honorable Court has decided an important question of federal practice which has not been but should be settled by the Supreme Court of the United States, and has decided a federal question in a way probably in conflict with decisions of the Supreme Court of the United States, does intend to petition the Supreme Court of the United States for review on writ of certiorari of the decision and judgment of this court filed in this cause on June 29, 1945.

Appellant represents that in the event the foregoing petition for rehearing is denied, he will promptly as possible thereafter file the petition for writ of certiorari in the Supreme Court of the United States, but that of necessity sufficient time will be required to secure from the clerk of this court the record to be filed in the Supreme Court of the United States in support of the petition for writ of certiorari, and also to prepare, print and file the petition for writ of certiorari and brief in support thereof. Appellant further represents that present printing facilities occasion delays which are not in other times encountered.

WHEREFORE, appellant requests this Honorable Court to stay the going down of the mandate herein for a sufficient and reasonable time after the decision and judgment of this court becomes final in order to permit appellant to file the petition for writ of certiorari, and the record in support thereof, in the Supreme Court of the United States.

Respectfully submitted,

LESLIE C. HARDY,
Attorney for Appellant

THOMAS W. NEALON,
In Propria Persona

CERTIFICATE OF GOOD FAITH

The undersigned attorneys, who are members of the bar of this court, and who are attorneys for the appellant herein, do hereby certify that the foregoing Petition for Rehearing and Applications for Stay of Mandate are based upon representations and contentions which they think are substantial, and

they do hereby further certify that they are not filed herein for the purpose of any delay but are filed herein by counsel in good faith.

LESLIE C. HARDY,
Attorney for Appellant

THOMAS W. NEALON,
In Propria Persona